

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 ERIC LAWRENCE WRIGHT,

10 Plaintiff,

11 v.

12 PAUL PASTOR, *et al.*,

13 Defendants.

Case No. C08-5603 RJB/KLS

ORDER STRIKING “MOTION OF
COMPLAINT” AND DIRECTING
PLAINTIFF TO COMPLY WITH
ORDER TO AMEND

14 Before the Court is Plaintiff’s “Motion of Complaint re Due Process.” Dkt. # 10. For the
15 reasons stated below, the Court orders that this motion shall be stricken from the docket and
16 Plaintiff ordered to comply with the Court’s earlier Order.

17 **I. DISCUSSION**

18 Plaintiff filed an original complaint and application to proceed *in forma pauperis* on
19 September 30, 2008. Dkt. # 1. Plaintiff was granted leave to proceed *in forma pauperis* and the
20 complaint was filed. Dkt. # 3 and Dkt. # 4, respectively. In his original complaint, Plaintiff named
21 Paul Pastor and S. Kasten, as well as two unnamed “John Doe” correction officers, as defendants,
22 claiming that his civil rights were violated when privileged materials were seized from him and his
23 attorney and that not all of the materials were returned to him. Dkt. # 4, p. 3. Plaintiff alleged that
24 removal of these materials may have compromised his right to a fair trial. *Id.*, p. 4.

25 The Court directed Plaintiff to fill out proper service forms and provide the Court with

1 service copies of the Complaint. Dkt. # 8.

2 On November 13, 2008, Plaintiff filed his motion to amend, in which he named Sheriff Paul
3 Pastor, “for violations . . . committed both singly and collectively by Pierce County officials
4 working under [his] direct supervision.” Dkt. # 7. Plaintiff sought to add a claim that he was given
5 medication without his consent causing him to exhibit psychotic behavior at his court hearing, and a
6 claim that a prosecutor charged him with additional crimes on July 28, 2008 after he refused to
7 accept a plea agreement. *Id.*, pp. 3-4. Plaintiff also asked this Court to intervene as he is being
8 denied discovery and exculpatory evidence in his state cases. *Id.*, p. 4.

9 On December 5, 2008, Plaintiff submitted this “Motion of Complaint Re Due Process
10 Rights, in which he names “Paul Pastor, et al. S. Kasten,” stating that he accuses “the above named
11 defendants of violating my due process rights guaranteed under the U.S. Constitution Amend XIV.”
12 Dkt. # 10. This pleading is wholly insufficient in that it does not state a claim under 42 U.S.C. §
13 1983. Plaintiff is referred to the Court’s Order (Dkt. # 9), in which Plaintiff is instructed how to set
14 forth his claims.

15 On December 17, 2008, Plaintiff submitted a marshal form for service on Defendant S.
16 Kasten.

17 On December 29, 2009, the Court granted Plaintiff’s motion to amend his complaint,
18 directing him to submit a proposed amended complaint on or before January 23, 2009. Dkt. # 9.
19 On January 9, 2009, the Court’s Order was returned as “Undeliverable Offender Failed to Report
20 for Legal Mail Callout.” Dkt. # 11. On January 12, 2009, the Clerk remailed Dkt. # 9 to Plaintiff.

21 To date, Plaintiff has not complied with the Court’s Order (Dkt. # 9) directing him to file an
22 amended complaint.

23 Accordingly, it is **ORDERED**:

24 (1) The Clerk shall strike Plaintiff’s “motion of complaint” (Dkt. # 10).

25 (2) Plaintiff shall comply with the Court’s Order dated December 29, 2008 (Dkt. # 9) in

1 the filing of his amended complaint, **except** that the Court shall grant Plaintiff additional time to
2 submit his amended complaint. Plaintiff shall submit his proposed amended complaint **on or**
3 **before February 13, 2009.**

4 (3) Plaintiff is reminded that when a complaint is frivolous, fails to state a claim, or
5 contains a complete defense to the action on its face, the court may dismiss an *in forma pauperis*
6 complaint before service of process under 28 U.S.C. § 1915(d). *Noll v. Carlson*, 809 F.2d 1446,
7 1448 (9th Cir. 1987) (*citing Franklin v. Murphy*, 745 F.2d 1221, 1227 (9th Cir. 1984)). A complaint
8 is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*, 745 F.2d 1221, 1228
9 (9th Cir. 1984). **Plaintiff is cautioned that if he fails to show cause or amend his complaint by**
10 **February 13, 2009, the Court will recommend dismissal of this action as frivolous pursuant to**
11 **28 U.S.C. § 1915 and such dismissal will count as a “strike” under 28 U.S.C. § 1915(g).**

12 (4) The Clerk is directed to send Plaintiff the appropriate forms that he may file an
13 amended complaint. The Clerk is further directed to send a copy of this Order and a copy of the
14 General Order to Plaintiff

15
16 DATED this 16th day of January, 2009.

17
18 
19 Karen L. Strombom
20 United States Magistrate Judge
21
22
23
24
25